



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-25/48984

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2001, under WI Stat § 49.45(5) and WI Admin Code § HA 3.03(1), to review a decision by the Iowa County Dept. of Social Services in regards to Medical Assistance (MA), a hearing was held on June 26, 2001, at Dodgeville, Wisconsin.

The issue for determination is whether the petitioner is entitled to a reallocation of assets to his community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
(POA)
Same Address as Petitioner's

Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Marlene Stenner, , ESS
Iowa County Dept Of Social Services
109 W. Fountain Street
PO Box 98
Dodgeville, WI 53533

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 389-36-9210, CARES #0111445205) is an institutionalized resident of Iowa County; he became institutionalized on February 12, 2001, and he applied for MA on March 12, 2001.
2. The petitioner's individual monthly income consists of \$699 in Social Security benefits. The community spouse's gross monthly income is \$489 in Social Security benefits, plus \$105 from two pensions, i.e., \$594. The couple has joint (estimated) investment income of \$334.95 per month from the household's assets. On or about April 16, 2001, the county agency assessed the

couple's available assets and determined that they totaled \$120,075.14; accordingly, the petitioner and his community spouse were informed that the community spouse's asset share was \$60,037.57.

3. Subsequently, on April 27, 2001, the POA reported discovery of additional available assets, bring the couple's total available assets to \$131, 208.90. As a result, the petitioner's asset eligibility test amount also increase to \$67, 604.45 (\$65,604.45[1/2 of couple's available assets] + \$2,000 [standard asset test amount] = \$67,604.45). The petitioner was again determined by the agency to remain over the asset limit and the denial of Institutional – MA was reaffirmed by the agency.
4. The petitioner filed an appeal with the Division of Hearings & Appeals on April 27, 2001, seeking to have the administrative law judge re-allocate all assets to his community spouse to generate income for her.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. WI Stat § 49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. WI Stat § 49.455(4)(a).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$65,604.45. See the MA Handbook, App. 23.4.2, which is based upon WI Stat § 49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy, i.e., \$67,604.45. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As an exception to this general rule, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case was \$1,875 in February, 2001. MA Handbook, Appendix 23.6.0 (5-1-00). As of May 1, 2001, the allowance increased to \$1,935. Handbook, App. 23.6.0 (5-1-01).

WI Stat § 49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs

allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, the Wisconsin Court of Appeals, in Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, __ N.W. 2d __, concluded that the final sentence violated the mandate of the federal MCCA law. The Blumer court held that the hearing examiner first must allocate resources to maximize the community spouse's income, and only if the resources' income does not bring the community spouse's income up to the monthly minimum can the institutionalized spouse's income be allocated. The Blumer decision is on appeal to the United States Supreme Court, but currently it is the law that must be followed.

The result in this case is as follows. Petitioner's community spouse's individual monthly income is \$489 + \$105 [pensions] = \$594. Allocating the assets to her adds an estimated \$334.95 (Note: ESS Stenner's testimony was to the effect that this is the most accurate assessment; it is also the lowest.) in additional monthly income, thus bringing her total monthly income to \$928.95. Since the total is below \$1,875, the result is that all of the couple's non-exempt assets are re-allocated to petitioner's wife, the community spouse.

As a result, the county will reallocate some or all of petitioner's sole income to his wife when it determines his monthly cost of care under the MA rules. I will remand the matter to the agency to re-allocate the resources and review and re-determine his cost of care contribution, all retroactive to February 1, 2001.

CONCLUSIONS OF LAW

All of the non-exempt assets of petitioner and his community spouse must be allocated to the community spouse wife to maximize her monthly income.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$131,208.90 as of February 12, 2001, and to re-determine petitioner's MA eligibility retroactive to February 1, 2001, based upon the new community spouse asset allocation; and to determine the petitioner's cost of care liability retroactive to February 1, 2001. The county shall do so within 20 days of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.”

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other “PARTIES IN INTEREST” named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
79/KDD

cc: Marlin Harms - Iowa Co. D.S.S.
Susan Wood – DHFS